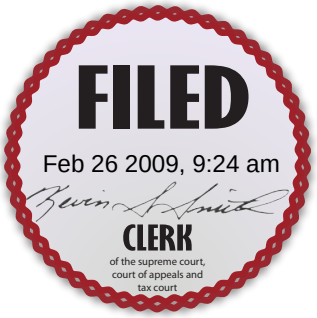

ATTORNEY FOR APPELLANT:

CHRISTOPHER J. McELWEE
Monday Jones & Albright
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GARY RAY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0807-CV-419
	)	
CITY OF INDIANAPOLIS,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael D. Keele, Judge
Cause No. 49F12-0804-OV-14324

February 26, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Gary Ray appeals the trial court's judgment that he violated Section 531-102(c)(1) of the Revised Code of the Consolidated City of Indianapolis and Marion County. Ray raises one issue, which we revise and restate as whether the evidence is sufficient to support the trial court's judgment that he violated Section 531-102(c)(1). We reverse.

The relevant facts follow. On the morning of January 28, 2008, Peter Carroll took his dog for a walk. Carroll was walking on the sidewalk, and his dog was walking on a leash at his side. As they passed Ray's property, which was enclosed by a shadow-box fence, they heard Ray's dog barking. Ray's dog then put its snout through a gap where boards were missing in the fence and bit Carroll's dog. Carroll called Animal Care and Control.

The City of Indianapolis filed a complaint against Ray alleging that he had violated Section 531-102(c)(1) of the Revised Code of the Consolidated City of Indianapolis and Marion County. After a bench trial, the trial court concluded that Ray had violated Section 531-102(c)(1), enjoined him from violating that section again, and fined him $500.

The issue is whether the evidence is sufficient to support the trial court's judgment that Ray violated Section 531-102(c)(1). We note first that the City of Indianapolis failed to file an appellee's brief. When the appellee fails to submit a brief, we need not undertake the appellee's burden of responding to arguments that are advanced for reversal by the appellant. Hamiter v. Torrence, 717 N.E.2d 1249, 1252 (Ind. Ct. App. 1999). Rather, we may reverse the trial court if the appellant makes a prima facie case of

error. Id. "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." Id.

An ordinance violation must be proved by a preponderance of the evidence. Ind. Code § 34-28-5-1(d). When reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. Plesha v. Edmonds ex rel. Edmonds, 717 N.E.2d 981, 985 (Ind. Ct. App. 1999), reh'g denied, trans. denied. Rather, we consider only the evidence and all reasonable inferences therefrom which support the judgment. Id. When, as here, a trial court enters a general judgment with no findings of fact, we presume the judgment is based on findings supported by the evidence. Id. at 986. Our standard of review in such cases is limited, and we must affirm the trial court's judgment if it can be sustained on any legal theory supported by the evidence. Id.

This case requires that we construe Section 531-102(c)(1). When we construe a municipal ordinance, we apply the rules applicable to statutory construction. City of Indianapolis v. Campbell, 792 N.E.2d 620, 624 (Ind. Ct. App. 2003), reh'g denied. The primary rule of statutory construction is to ascertain and give effect to the intent of the statute's drafters. Id. (citing Hendrix v. State, 759 N.E.2d 1045, 1047 (Ind. 2001)). The best evidence of that intent is the language of the statute, and all words must be given their plain and ordinary meaning unless otherwise indicated by the statute. Id.

Section 531-102 of the Revised Code of the Consolidated City of Indianapolis and Marion County provides in relevant part:

> (a) It shall be unlawful for the owner or keeper of an animal to cause, suffer, or allow that animal which is owned or kept by such person to be at large in the city.[1]
>
> * * * * *
>
> (c) If, while the animal is at large in violation of this section at a location other than its owner's or keeper's property, it:
>
> (1) Attacks another animal; or
>
> (2) Chases or approaches a person in a menacing fashion or apparent attitude of attack;
>
> then the violation shall be subject to the enforcement procedures and penalties provided in section 103-3 of the Code, and the fine imposed shall not be less than two hundred and fifty dollars ($250.00), or five hundred dollars ($500.00) if another animal or person is injured as a result of the animal's actions.

Section 531-101 defines "at large" as "not confined without means of escape in a pen, corral, yard, cage, house, vehicle or other secure enclosure, unless on a leash and under the control of a competent human being." Thus, to prove that Ray violated Section 531-102(c)(1), the City had to show by a preponderance of the evidence that Ray's dog was not confined without means of escape in a secure enclosure and that it was at a location other than Ray's property when it attacked Carroll's dog.

Here, when it attacked Carroll's dog, Ray's dog was confined by a fence on Ray's property. Although Ray's dog was able to put its snout through a gap in the fence, we cannot say that, based on the evidence produced at trial, Ray's dog was at a location other than Ray's property when it bit Carroll's dog. Accordingly, we conclude that the City failed to present evidence of a probative value from which a reasonable trier of fact could

[1] Section 531-102(a) was subsequently amended to provide: "An owner or keeper of an animal

have found that Ray violated Section 531-102(c)(1). See, e.g., Stewart v. City of Indianapolis, 798 N.E.2d 863, 866 (Ind. Ct. App. 2003) (holding that defendants were entitled to summary judgment concerning alleged violations of then Section 531-205 of the Revised Code where the evidence did not establish that their dog was "unconfined" when it bit a child on three different occasions). Ray has made a prima facie case of error, and we therefore reverse the trial court's judgment.

For the foregoing reasons, we reverse the trial court's judgment that Ray violated Section 531-102(c)(1) of the Revised Code of the Consolidated City of Indianapolis and Marion County.

Reversed.

ROBB, J. and CRONE, J. concur

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commits a violation of the code if that animal is at large in the city."